Americans with Disabilities Amendments Act (ADAAA)

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Session Goals

1. Review history of Disability Rights to have necessary framework for learning about the ADA
2. Define Disability
3. Discuss ADA provisions for reasonable accommodation
4. Answer your questions

Historical Perspective

- People with Disabilities forced into dependency
- Segregated from society
- Didn't view individuals with disabilities as deserving direct participation in decisions

A New Vision

- Self Advocacy and Individual Empowerment through inclusion
- Independent Living, Equal Rights and Access

Americans with Disabilities Act

President George Bush Senior signing the Americans with Disabilities Act on July 26, 1990

Americans with Disabilities Act

- The Americans with Disabilities Act of 1990 (ADA) is the most significant civil rights legislation to be enacted by Congress since the Civil Rights Act of 1964.

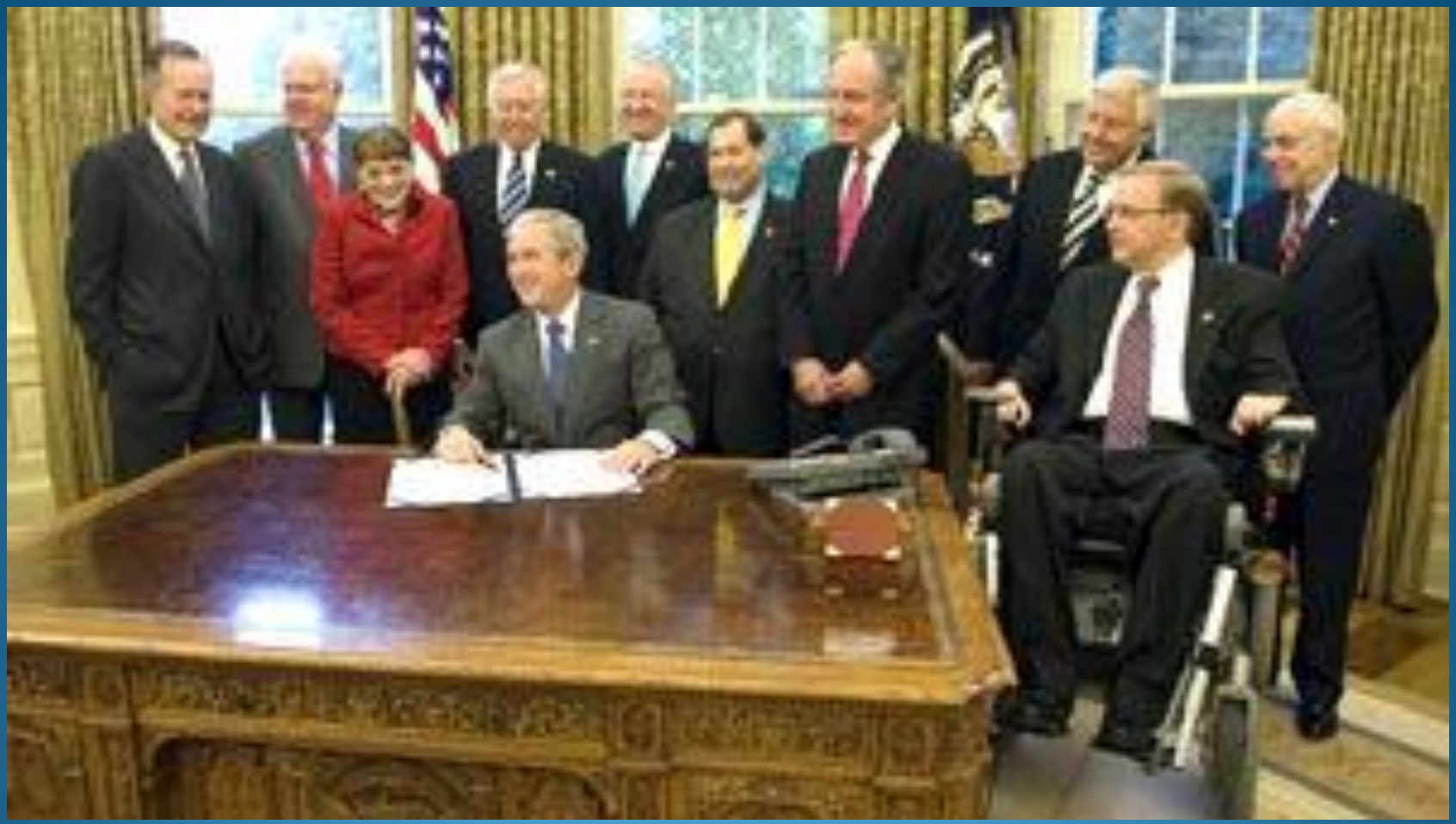
- The ADA makes it illegal to discriminate against anyone who has a mental or physical disability in the area of employment, public services, transportation, public accommodations and telecommunications.

Court Interpretations Narrow ADA Coverage

ADA goals were not met due to initial restrictive court decisions:

- **Sutton v. United Airlines:** mitigating measures ruling restricted definition of disability
- **Toyota v. Williams:** established that definition of disability should be "interpreted strictly" to create a "demanding standard."

Signing of the ADAAA



President George Bush Jr. signing the *Americans with Disabilities Amendments Act on Sept. 25, 2008*

What is the ADA/ADAAA?

- The ADA, as amended by the ADAAA, prohibits discrimination against qualified individuals on the basis of disability (including against people because they are "associated with" someone who is disabled) in all aspects of employment
  - Application for employment
  - Hiring, firing, layoff
  - Job assignments, promotions, demotions
- Requires "reasonable accommodations" for disabled applicants and Employees
- Protects confidentiality of medical information

Purpose of the Regulations

- Convey that Congress intended that a primary focus in ADA cases is whether entities covered by the ADA have complied with their obligations; and
- Convey that whether a person's impairment is an ADA disability should not demand extensive analysis.

Broad Interpretation of the Definition of Disability

ADAAA: Definition of disability "shall be construed in favor of broad coverage… to the maximum extent permitted by the terms of this Act."

42 U.S.C. § 12102(4)(A), as amended.

Explicitly overruled U.S. Supreme Court cases that unduly restricted the definition of who is a person with a disability – *Sutton and Toyota*

Definition of "Disability"

"Disability" means:

i. A physical or mental impairment that **substantially limits a major life activity**

ii. A **record** of such an impairment

iii. **Being regarded** as having a disability

Prong 1 - Defining physical or mental impairments

- A physical or mental impairment that **substantially limits a major life activity**
- Physical or mental impairment: any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine."

Prong 1 - Defining physical or mental impairments

- They also cover any mental or psychological disorder, such as intellectual disability (formerly termed mental retardation), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Prong 1 - Duration

Do the regulations require that an impairment last a particular length of time to be considered substantially limiting?

No. Even a short-term impairment may be a disability if it is substantially limiting.

Prong 2 -- "Record of"

- Covers anyone subjected to an action "prohibited by this Act" because of an actual or perceived physical or mental impairment
- For example, applies to actions such as hiring, demotion, promotion, termination, discipline, annual evaluation, compensation decisions
- Individuals with "record of" disability may be entitled to reasonable accommodation

Prong 3 –"Regarded as" cont.

- Regarded as coverage no longer requires a showing that an employer **believed** the impairment substantially limited a major life activity

- **Only two elements:**
  - Employer took employment action…
  - <u>Because of</u> an individual's actual or perceived impairment

How the Statute Changes Definition

- Provides illustrative list of major life activities that includes "**major bodily functions**"
- Specifically rejects high standards used by EEOC and Supreme Court to define "substantially limits"
- Positive effects of mitigating measures (other than ordinary eyeglasses or contact lenses) **cannot** be considered in determining "disability"
- Impairment can be substantially limiting even if **episodic** or **in remission**

How the Statute Changes Definition

Remember:

Goal of all of these changes is to broaden the definition and make it much easier/quicker to find disability without a demanding analysis

ADAAA and Major Life Activities

A non-exhaustive list of major life activities:

caring for oneself
performing manual tasks
seeing
hearing
eating
sleeping
learning
concentrating & thinking working
walking & standing
reading
lifting
bending
speaking
breathing
communicating

Trends in EEOC Charge Data

	2000	2005	2012
Total #	79,896	75,428	99,412
Race %	36.2	35.5	33.7
Gender %	32	31	31
National origin %	9.8	10.7	10.9
Religion %	2	3	4
Color %	1.6	1.4	2.7
Retaliation %	27	30	38
Age %	20	22	23
Disability %	**20**	**20**	**27**
Equal Pay	1.6	1.3	1.1

Note: Charges can be brought under more than one category

*EEOC (2012) *EEOC Charge Statistics FY 1997 – 2012*. Accessed at http://eeoc.gov/eeoc/statistics/enforcement/charges.cfm

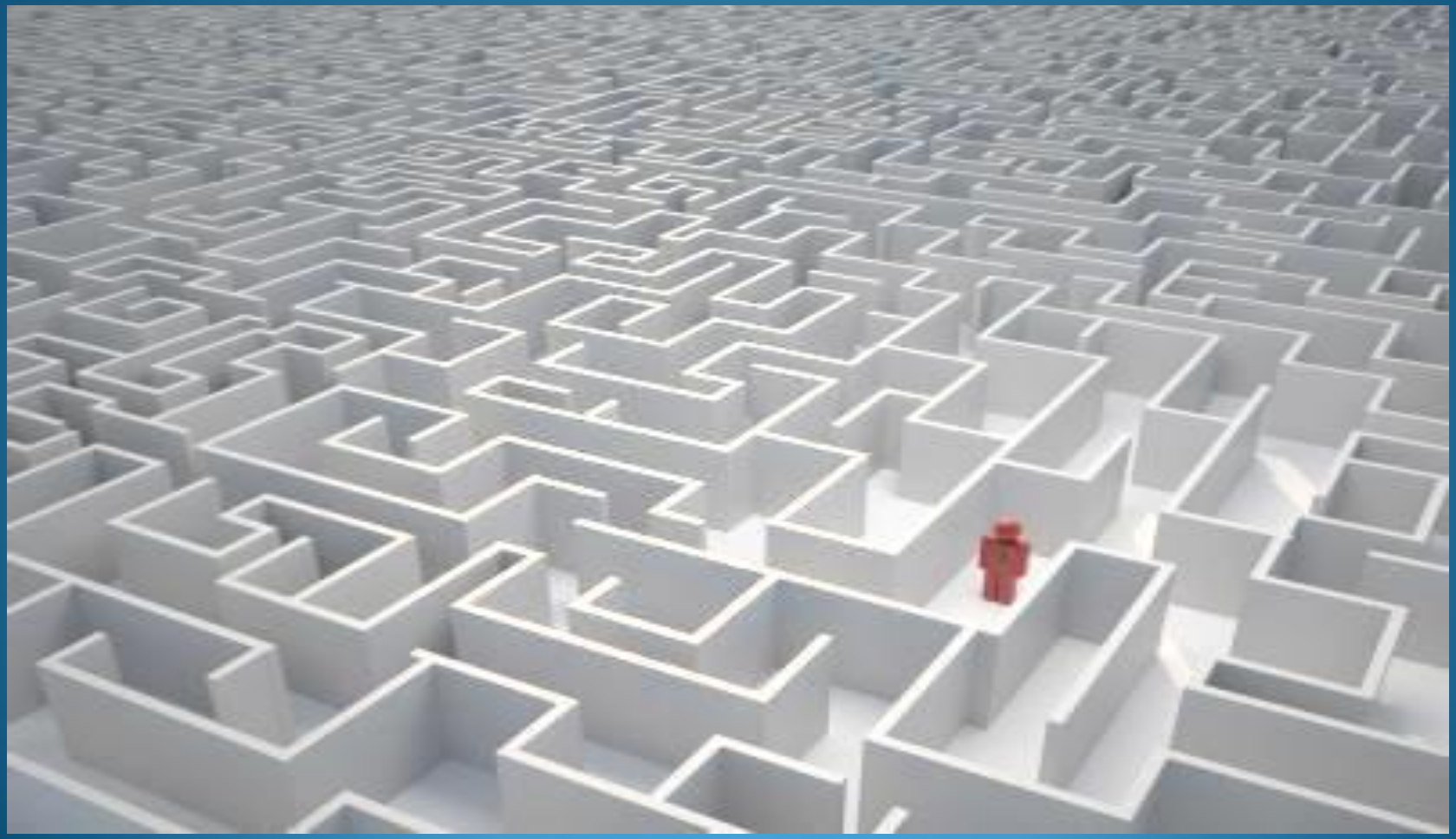
Employment Discrimination Charges Filed

Most Common Issues on ADA Charges filed in U.S.: 2008-2010

Rank	Charge	% of all charges
1	Discharge	59.14%
2	**Accommodation**	**29.94%**
3	Terms/Conditions	21.01%
4	Harassment	16.12%
5	Discipline	10.51%
6	Hiring	6.1%
7	Constructive Discharge	4.23%

Source: Calculations by S. von Schrader, Cornell University, Employment and Disability Institute, using the EEOC IMS files, 2008-2010. Development of this table was supported by *Employer Practices Related to Employment Outcomes Among Individuals with Disabilities (H133B100017)* funded by the U.S. Department of Education National Institute on Disability and Rehabilitation Research to Cornell University.

Accommodation Basics



Reasonable Accommodations

- Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities
- Equal employment opportunity: opportunity to attain same level of performance or to enjoy equal benefits and privileges of employment

Three Categories of Accommodations

1. Application process
2. Performance of the essential functions of the position
3. Enjoyment of equal benefits and privileges of employment

Accommodation Basics

- Must be an effective accommodation
- Need not be *best* accommodation, just *effective*
- Must only reduce employment-related barriers
- Personal devices not required
- Individuals covered solely under the "regarded as" prong NOT entitled to accommodations
- Employer not prevented from providing extra accommodations

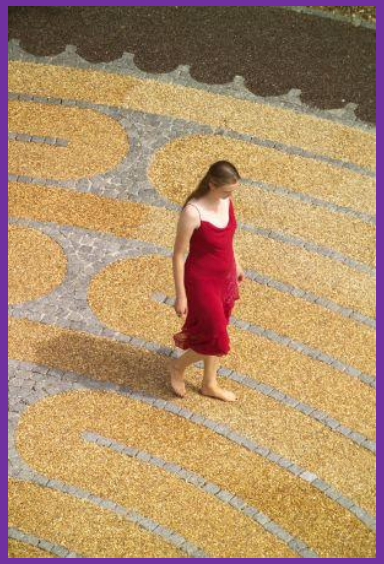
Reasonable…

- Making modifications to increase facility accessibility
- Job restructuring
- Flexible scheduling
- Acquiring new equipment
- Providing qualified readers and interpreters
- Modification of application and testing procedures and training materials

…Not so much!

- Eliminating essential job functions
- Lowering production standards applied to all employees
- Providing personal use items
- Changing an employee's supervisor
- Excusing violation of uniformly applied conduct rules
- Undue hardship

Reasonable Accommodation Challenge



Challenge

Rodney is an HR professional for a service agency. He has a seizure disorder. His morning meds cause him to be sluggish and drowsy so he takes advantage of the employer's flex time policy. One day, his supervisor informs him he can no longer "be late" and suggests the doctor change his medication regimen. Rodney is eventually suspended without pay. He formally requests an accommodation, allowing him to arrive before 11 am as long as he works his required 35 hours per week. The request is denied without any conversation with Rodney.

Reasonable request or not?

The Accommodation Process

Reasonable Accommodation

An employer is required to make a reasonable accommodation to employees and applicants that are covered by the ADA unless doing so would impose an "undue hardship" on the operation of the employer's business.

Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

Employee Responsibilities

- Process must be initiated by the employee with a disability - disclosure required
- Provide documentation of need for accommodation if requested
- Be involved in process of identifying effective accommodation

The Interactive RA Process

- Learn the specific essential job functions the employee is unable to perform due to disability
- Understand employee's ideas for specific accommodations
- Request additional information that justifies an employee's specific request
- Facilitate a negotiation resulting in mutual agreement

The Interactive RA Process (cont.)

- Explain what accommodation the employer is able and willing to provide
- Inform the employee about the employer's inability to provide a reasonable accommodation due to undue hardship
- Occurs in a timely manner
- Ongoing obligation

Provision of Accommodations

- Know accommodation resources
- Consider developing accommodation policies and request forms
- Don’t be afraid to ask for documentation of need for accommodation
- Determine who should participate in the interactive process

Centralized RA Process

- Capitalize on expertise
- Leverage financial supports
- Streamlines the response to accommodation requests
- Tracking & reporting accommodation documentation
- Roles are clearly specified from the outset
- Maintains confidentiality
- Coordinated communication

Engaging Managers/Supervisors

- Key gatekeepers of disability inclusiveness in the workplace
- Most often receive initial information about disclosure and RA request
- Managers and supervisors must recognize RA requests
- ***Training is key!***
- Importance of bringing new managers up-to-speed on accommodations already in place

Documentation

- Describe why documentation is needed (i.e., to verify existence of disability and need for accommodation)
- Identify the types of professional who can provide documentation
- Describe the type of information needed in the documentation
  - Has a covered disability
  - Functional limitations that the person experiences because of the disability
  - Suggested accommodations in the workplace
- If the information provided does not clarify, employer may send to professional of their choice

RA Implementation

- Should not be held up by overly burdensome documentation process
- Provide training on the provided accommodation, if necessary
- Consider implementing a centralized funding mechanism
- Monitor implementation of the accommodation at regular intervals
- Explore options if first accommodation is unsuccessful
- Document RA implementation process

Accommodation Financial Issues

Accommodation Facts

- Over 70% of employees with disabilities never request an accommodation
- Cost effectiveness: 56% of employers reporting cost data paid nothing*
- 76% of employers report that accommodations are effective*

* Job Accommodation Network (Original 2005, Updated 2007, Updated 2009, Updated 2010, Updated 2011, Updated 2012). *Workplace accommodations: Low cost, high impact*. Retrieved September 3, 2012, from http://AskJAN.org/media/LowCostHighImpact.doc

Undue Hardship

- Action that requires significant difficulty or expense - unduly costly, extensive, substantial, disruptive, fundamentally alters nature or operation of business
- In relation to size of the employer, resources available, nature of the operation
- Must be determined on a case-by-case basis
- IMPORTANT: Consider alternate accommodations that do not create undue hardship

Other Accommodation Issues

Confidentiality

- Strict legal limitations on use of medical information
- All medical information kept in file separate from personnel records
- Share medical information only on an as-needed basis
- Includes sharing information with coworkers

Coworker Resentment

- When asked about accommodations:
  - Acting for legitimate business reasons
  - Acting in compliance with federal law
  - Tries to support the needs of all employees
- Clearly communicate to coworkers that accommodation is not preferential treatment
- When possible, extend certain accommodations to all employees

Accommodation Resources

National Network of ADA Centers

- Ten regional centers funded by the US Department of Education
- Great Plains ADA Center
- http://www.gpadacenter.org/
- 1-800-949-4232

Key Organizations

- Job Accommodation Network 800/526-7234
- (V, TTY) www.askjan.org
- Equal Employment Opportunity Commission 800/669-4000 (V) www.eeoc.gov
- Department of Labor's Office of Disability Employment Policy www.dol.gov/odep/
- Cornell University Employment & Disability Institute www.hrtips.org

Questions?

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